

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

EMERSON LESLIE,

Petitioner,

vs.

D. W. NEVEN, et al.,

Respondents.

Case No. 2:13-cv-01989-APG-VCF

ORDER

Before the court are respondents' motion to partially strike petitioner's reply to answer (ECF No. 52) and petitioner's opposition (ECF No. 53). Respondents ask the court to strike two exhibits attached to petitioner's reply to the answer (ECF No. 51) because they were not part of the state-court record. Respondents note correctly that this court's review under 28 U.S.C. § 2254(d) is limited to the record before the state courts at the time they adjudicated petitioner's claims on the merits. See Cullen v. Pinholster, 563 U.S. 170, 181-82 (2011). However, if § 2254(d) does not apply, then this court's review is de novo. The court cannot state at this time whether § 2254(d) applies, and the court will not strike exhibits now that it might need later. Furthermore, even if § 2254(d) does apply, the court would not need to strike exhibits; the court simply would not use those exhibits in its determinations.

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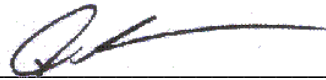
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1 IT IS THEREFORE ORDERED that respondents' motion to partially strike petitioner's
2 reply to answer (ECF No. 52) is **DENIED**.

3 DATED: September 22, 2016.

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6 ANDREW P. GORDON
7 United States District Judge
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